341st CONS

Feed For Bids

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Agenda

- Definitions
- Types of Bonds
- Bid Guarantees
- Performance & Payment Bonds
- Other Types of Bonds
- Administration
- Acceptance of Bonds and Sureties
- Overview

Definitions

- Bond: Written instrument assuring fulfillment of the principal's obligations to a third party.
- Consent of Surety: An acknowledgement by a surety that its bond continues to apply to the contract as modified.
- Penal Sum: The amount of money specified in a bond as the maximum payment for which the surety is obligated.

Types of Bonds

- Bid Guarantee
  - Assures that a bidder will not withdraw a bid and will execute a contract and furnish required bonds
- Performance Bond
  - Secures fulfillment of contractual obligations
- Payment Bond
  - Assures payments to laborers and suppliers
- Advance Payment Bond
- Patent Infringement Bond

Bid Guarantee

- Not required unless performance and payment bonds are also required
- May use annual bid bonds for supply and service contracts
- Must use separate bid bonds for construction.
- May be waived by the COCO
- Shall be at least 20% of bid but not exceed $3M
- Noncompliance may require rejection of the bid

Performance & Payment Bonds

- Construction Contracts
  - Required by Miller Act if over $100K unless waived
  - Penal amount must equal 100% of the contract price and an additional amount equal to 100% of a price increase
  - Payment bond amount must be no less than the performance bond
  - For contracts over $25K but under $100K, the CO shall select at least two of the following protections:
    - Payment bond
    - Irrevocable letter of credit
    - Tripartite escrow agreement
    - Certificates of deposit
    - Other types of security
  - Must receive bonds before issuing NTP

Performance & Payment Bonds

- Other than Construction Contracts
  - Generally not required
  - Performance bonds may be required if over the SAT when:
    - Government property is to be provided to the contractor
    - A contractor merges with another concern and the government desires assurance that it is financially capable
    - Substantial progress payments are to be made
    - Contracts are for dismantling, demolition or removal
  - A payment bond is required only when a performance bond is required
  - Annual performance bonds only apply to non-construction contracts and shall provide a gross penal sum applicable to all covered contracts.

Other Types of Bonds

- Advance Payment Bonds
  - Required only when the contract contains an advance payment provision and a performance bond is not required
  - The CO determines the amount necessary to protect the Government
- Patent Infringement Bond
  - Used in contracts providing for patent indemnity only if:
    - A performance bond is not furnished
    - The financial responsibility of the contractor is unknown
  - The CO determines the penal sum

Acceptability of Bonds

- Check to ensure bonds are:
  - Properly signed and notarized
  - Conform with the solicitation/contract bonding requirements
  - Include an affidavit certifying power of attorney from an approved surety (surety bonds)
- Corporate sureties must appear on Treasury Dept. Circular 570
  - http://www.fms.treas.gov/c570/c570.html
  - The penal sum should not exceed the stated limit

Administration

- The following bond-related forms shall be used
  - SF 24, Bid Bond
  - SF 25, Performance Bond
  - SF 25-A, Payment Bond
  - SF 34, Annual Bid Bond
  - SF35, Annual Performance Bond
  - SF 1414, Consent of Surety
  - SF 1415, Consent of Surety and Increase of Penalty
  - SF 1416, Payment Bond for Other Than Construction
  - SF 1418, Performance Bond for Other Than Construction

Administration

- Additional Bond and Security
  - When secured from original surety, use SF 1415
  - When secured from new surety, use form according to the type of bond required
- Consent of Surety
  - Must be obtained if:
    - An additional bond is obtained from other than the original surety
    - No additional bond is required and the mod. is for out-of-scope new work or an in-scope change of more than 25% or $50K
    - Required for a novation agreement
  - Use SF 1414 for all types of contracts

Administration

- Furnishing Information
  - The surety may be furnished info. on the project status
  - Subcontractors/suppliers may request surety info.
  - The CO shall provide a certified copy of the bond and contract to suppliers who have not been paid
- Withholding Contract Payments
  - Do not withhold because suppliers have not been paid
  - Withhold final payment if the government receives written notice from the surety that suppliers have not been paid
  - For withholdings incident to labor standards provisions, follow procedures in Part 22.

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- Questions?